X. APPENDIX

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In the

United States Court of Appeals

For the Seventh Circuit

No. 81-1421

IN THE MATTER OF:

JAMES STEWART LEGARE HAYNES, SR. and JOANNE GRACE HAYNES,

Debtors.

APPEAL OF:

WARD W. MILLER.

Appeal from the United States Bankruptcy Court for the Northern District of Indiana, Fort Wayne Division.
No. 80-B-10548—Robert K. Rodibaugh, *Judge.*

ARGUED MAY 12, 1982—DECIDED JUNE 7, 1982

Before BAUER and ESCHBACH, *Circuit Judges*, and JAMESON, *Senior District Judge.**

BAUER, *Circuit Judge.* Ward W. Miller, trustee in bankruptcy for the joint estate of Mr. and Mrs. James S. Haynes, Sr., appeals from the bankruptcy court order denying his request for turnover of Haynes' Navy retirement pay to the bankruptcy estate. We affirm.

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* The Honorable William J. Jameson, Senior District Judge of the United States District Court for the District of Montana, is sitting by designation.

I

Haynes retired from the Navy in 1971 after completing twenty years of service. Upon his retirement, Haynes was transferred to the Fleet Reserve and began receiving retainer pay. 10 U.S.C. § 6330. Sometime in 1981, Haynes was transferred to the retired list of the Regular Navy, whereupon his retainer payments ceased, and he began receiving retirement pay. *Id.* § 6331. He presently receives approximately $610.00 per month retirement pay.

Haynes and his wife filed a joint voluntary petition for bankruptcy on July 11, 1980. 11 U.S.C. § 701 *et seq.* They listed Haynes' Navy retirement pay as income. On August 11, 1980, the trustee in bankruptcy requested the bankruptcy court to order Haynes to turn over his retirement pay to the estate. *Id.* § 542(a). The trustee contended that the retirement pay was nonexempt property of the estate. *Id.* §§ 522, 541(a). The bankruptcy court entered an order on March 6, 1981, denying the trustee's request. The bankruptcy court held that Haynes' retirement pay was proceeds for services performed after Haynes filed the petition for bankruptcy, and, thus, it was not property of the estate. *Id.* § 541(a)(6).

II

Section 541 of the Bankruptcy Code broadly defines the bankrupt's estate as including "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Proceeds the debtor receives for services performed after filing the bankruptcy petition, however, are not property of the estate. *Id.* § 541(a)(6). The sole issue in this case is whether Haynes' retirement pay is proceeds for services performed after Haynes filed the bankruptcy petition.

From 1971 to 1981, Haynes received retainer pay for serving in the Fleet Reserve. As a member of the Fleet Reserve, Haynes was required to perform up to two months of active duty training every four years if

ordered to do so by the Secretary of Navy. 10 U.S.C. § 6485. Until 1977, Haynes was also required to report to the Navy for a physical examination at least once every four years. The Secretary of the Navy could have terminated Haynes' retainer pay if Haynes had failed to report for the examination. *Id.*[1] Moreover, Haynes was subject to recall to active duty in time of war or during a national emergency declared by the President or Congress or whenever otherwise authorized by law. *Id.* He also remained subject to the Uniform Code of Military Justice and could be tried by a military court-martial without the constitutional safeguards that are available to civilian citizens. *Id.* § 802(6). If convicted, Haynes could be dishonorably discharged and required to forfeit further retirement pay. *Id.* § 856. In 1981 after Haynes became a retired member of the Regular Navy, he remained subject to the Uniform Code of Military Justice, *id.* § 802(4), and could be recalled to active duty in time of war or national emergency. *Id.* § 6482.

Under most pension plans, the retiree is not required to perform any services for his former employer. The military retiree, however, remains obligated to the federal government to perform certain duties. *See, e.g.*, 10 U.S.C. §§ 6482 & 6485. If the retiree fails to perform these duties, his retirement benefits may be terminated. *Id.* § 856. Several courts, including the Supreme Court, have concluded that because the military retiree has continuing duties, military retirement is more like wages than it is like a pension. *United States v. Tyler*, 105 U.S. 244 (1881); *Costello v. United States*, 587 F.2d 424 (9th Cir. 1978), *cert. denied*, 442 U.S. 929 (1979); *Abbott v. United States*, 200 Ct. Cl. 384, *cert. denied*, 414 U.S. 1024 (1973); *Watson v. Watson*, 424 F. Supp. 866 (E.D.N.C. 1976). We agree. In light of the obligations imposed on a military retiree as conditions of receipt of retirement pay, military retirement pay is actually

[1] Members of the Fleet Reserve are no longer required to report for physical examinations. 10 U.S.C. § 6485 (amendment effective July 30, 1977).

reduced compensation for reduced current services. *United States v. Tyler*, 105 U.S. 244, 245 & 246 (1881). *See also McCarty v. McCarty*, ... U.S. ....., 49 U.S.L.W. 4850 (June 26, 1981). Haynes's retirement pay is proceeds for services performed after the filing of the bankruptcy petition, and, thus, it is not property of the estate. 11 U.S.C. § 541(a)(6).

The judgment of the bankruptcy court is

AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF	)	
	)	
JAMES STEWART LEGARE	)	
HAYNES, SR.	)	CASE NO. 80-10548
and	)	
JOANNE GRACE HAYNES	)	
	)	
Debtors	)	

O R D E R

At South Bend, Indiana, on March 6, 1981.

This matter is before the Court on the trustee's application for turnover order pursuant to Section 542(a) of the Bankruptcy Code which states:[1]

Section 542. Turnover of property to the estate.

> (a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or

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1. 11 U.S.C.A. §542(a) (1979).

> that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

This cause came on for hearing before the Court on October 2, 1980, and after the filing of briefs was thereafter taken under advisement.

The evidence indicates that the debtor, James Stewart Legare Haynes, Sr., after retiring from the United States Navy in 1971, has been receiving a full pension of approximately $7,200.00 annually. The trustee contends that future naval retirement benefits are a property right of the debtor which pass to the estate for the benefit of the debtor's creditors. Although the debtor has claimed no exemption pertaining to the benefits, the trustee avers that the $100.00 exemption for intangibles con-

tained in Indiana Code Section 34-2-28-1[2] would be applicable. The trustee prays this Court enter an order requiring the debtor to turn over to the trustee all Navy pension payments received since the date of the filing of the petition until the claims of the creditors are satisfied.

The debtor maintains he has no present interest in the future benefits which are contingent upon his survival. Thus, he has no interest which could become property of the estate. Additionally, the debtor asserts that the benefits are necessary to his obtaining a fresh start since as an over-the-road truck driver he expends approximately $188.13 weekly for his tractor main-

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2. Ind. Code Ann. §34-2-28-1 (Burns Supp. 1980).

tenance and fuel.

To determine what constitutes property of the estate, initially we turn to Section 541 of the Bankruptcy Code[3] which states in pertinent part:

> Section 541. Property of the estate.
>
> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located:
>
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

Thus, the question becomes whether the retirement benefits are a legal or equitable interest of the debtor in property. The Code, however, neither defines "property" nor "interest in property."

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3. 11 U.S.C.A. §541 (1979).

Under the Bankruptcy Act of 1898, the question of what is property under Section 70(a) was a federal question [4] and we find no reason to believe that it is not a federal question under the Bankruptcy Code.[5] In addressing this question, the United States Supreme Court has determined in cases arising under the Bankruptcy Act that the purposes of the Bankruptcy Act itself ultimately determines the scope and limitations of the term "property."[6] To this end, the Supreme Court explained that there is a twofold purpose which must be balanced:

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4. Segal v. Rochelle, 382 U.S. 375 (1966).

5. In re Ford, No. 79-2-1846-L (Bankr. Ct. Md. April 15, 1980); 4 Collier on Bankruptcy, ¶541.02 at 541-12 (15th ed. 1980).

6. Kokoszka v. Belford, 417 U.S. 642 (1974); Segal, supra.

first, the purpose of converting the estate into cash for distribution among creditors, and second, the purpose of providing the debtor with a fresh start by leaving him free after the date of the filing of his petition to accumulate new wealth in the future.

Considering these purposes in determining whether inchoate claims for loss-carryback refunds are property, in dicta in Segal v. Rochelle,[7] the Court stated:

> However, limitations on the term [property] do grow out of other purposes of the Act; one purpose which is highly prominent and is relevant in this case is to leave the bankrupt free after the date of his petition to accumulate new wealth in the future. Accordingly, future wages of the bankrupt do not constitute "property" at the time of bankruptcy nor, analogously, does an intended bequest to him or a promised gift--even though state law might permit all of these to be

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7. Segal, supra, at 379

> alienated in advance. [citations omitted.]

However, the advent of the Bankruptcy Code of 1978 diminishes the relevance of this analysis due to the broadened scope of paragraph (1) of subsection (a) of Section 541. The Senate Judiciary Committee reporting on Section 541 of Senate Bill 2226 stated:[8]

> Paragraph (1) has the effect of overruling Lockwood v. Exchange Bank, 190 U.S. 294 (1903), because it includes as property of the estate all property of the debtor, even than needed for a fresh start. After the property comes into the estate, then the debtor is permitted to exempt it...

The House Report on Section 541 of House Bill 8200 recites the above language

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8. S. Rep. No. 95-989, 95th Cong., 2nd Sess. 82 (1978).

verbatim.[9] Accordingly, the legislative history indicates Congress' intent that the purposes of the Bankruptcy Code would not control what constitutes property in the same manner that the purposes were controlling under the repealed Bankruptcy Act. However, the principal that future wages do not constitute property at the time of the filing of the debtor's petition remains sound.

The military retirement benefits in the case at bar are paid monthly on the contingency that the debtor is alive on the first day of each month. The military plan differs from other pension plans in that it is non-contributory, is entirely taxable, and is subject to garnishment and attachment. These qualities

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9. H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 368 (1977).

liken the payments to wages.

Section 1315 of title 10 of the United States Code[10] states that a member of the armed forces retired for length of service "is entitled to retired pay" to make explicit the entitlement. First, noteworthy is the word choice of this provision as the word "pay" connotes "wages." Second, the right to payment must be distinguished from the payment itself. Although the statute grants an entitlement, the entitlement is the only interest which the debtor has at the commencement of his bankruptcy case, not the payments themselves. The debtor does not have the ability to proceed to a court or law to enforce his interest in receiving future payments by demanding the future payments at the present time.

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10. 10 U.S.C.A. §1315 (1975).

Rather, the debtor may proceed to court to protect his right to the future payments, the right to payment being the only "property" in which the debtor has an interest at the commencement of the case. The right to future payment is of no value to the debtor's estate due to the fact that the Navy will not make a lump sum distribution or any distribution in advance.[11]

Viewing the Navy retirement benefits as future wages, the Court finds that the future payments are not property in which the debtor has an interest under Section 541 of the Bankruptcy Code. Accordingly,

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11. Because the debtor does not have a present right to withdraw benefits, his entitlment would also fall outside the definition of property found in Indiana Code §31-1-11.5-2 for purposes of dissolution of marriage. Ind. Stat. Ann. §31-1-11.5-2 (Burns 1980).

the trustee's application for turnover is hereby denied.

This order constitutes the findings of fact and conclusions of law required by Bankruptcy Rule 752.[12]

SO ORDERED.

/s/ Robert K. Rodibaugh
UNITED STATES BANKRUPTCY JUDGE

cc: Ward W. Miller, Esq.
Mark C. Chambers, Esq.

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12. F.R. Bankr. P. 752

Notes of Decisions

1. Mental temperament

Upon examination of the finding of the retiring board in the case of Paymaster Rodney, of the Navy, the proceedings in which took place in June, 1871, and were approved by the President August 31, 1871, who at the same time directed that Paymaster R. be retired on furlough pay, advised that the board found the latter incapacitated upon the sole ground that his peculiar mental temperament unfitted him for active service in the navy, that his consequent retirement was not "because of misconduct," and that there is no legal ground for setting aside the proceedings of the retiring board and revoking the order of retirement in his case. 1873, 15 Op.Atty.Gen. 446.

§ 6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay

(a) The Fleet Reserve and the Fleet Marine Corps Reserve are composed of members of the naval service transferred thereto under—

(1) Title II of the Naval Reserve Act of 1938 (52 Stat. 1178), as amended; or

(2) this section.

(b) An enlisted member of the Regular Navy or the Naval Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

(c) Each member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled, when not on active duty, to retainer pay at the rate of 2½ percent of the basic pay that he received at the time of transfer multiplied by the number of years of active service in the armed forces. A member may recompute his retainer pay under section 1402 of this title to reflect active duty after transfer. If the member has been credited by the Secretary of the Navy with extraordinary heroism in the line of duty, which determination by the Secretary is final and conclusive for all purposes, his retainer pay shall be increased by 10 percent. However, in no case may a member's retainer pay be more than 75 percent of the basic pay upon which the computation of retainer pay is based.

(d) For the purposes of subsections (b) and (c), a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded. A completed minority enlistment is counted as four years of active service, and an enlistment terminated within three months before the end of the term of enlistment is counted as active service for the full term. Aug. 10, 1956, c. 1041, 70A Stat. 396; Aug. 1, 1958, Pub.L. 85-583, § 1(2), (3), 72 Stat. 480.

1963 U.S.Code Cong. and Adm.News, p. 912. See, also, Pub.L. 90-207, 1967 U.S. Cong. and Adm.News, p. 2218; Pub.L. 96-342, 1980 U.S.Code Cong. and Adm. News, p. 2612; Pub.L. 96-513, 1980 U.S. Code Cong. and Adm.News, p. 6233.

Library References
Armed Services ⇐22.4
C.J.S. Army and Navy § 31.

§ 6327. Officers and enlisted members of the Naval Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay

[See main volume for text of (a)]

(b) Each member who is transferred to the Retired Reserve under subsection (a) is entitled, when not on active duty, to retired pay at the rate of 50 percent of the basic pay of the grade in which retired.

[See main volume for text of (c) to (e)]

As amended Oct. 2, 1963, Pub.L. 88-132, § 5(h)(5), 77 Stat. 214.

Library references: Armed Services ⇐13.5(6); C.J.S. Army and Navy § 20.

1963 Amendment. Subsec. (b). Pub.L. 88-132 substituted "of the grade in which retired" for "to which he would be entitled if on active duty" following "50 percent of the basic pay."

Effective Date of 1963 Amendment. Amendment of section by Pub.L. 88-132 effective Oct. 1, 1963, see section 14 of Pub.L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

Legislative History: For legislative history and purpose of Pub.L. 88-132, see 1963 U.S.Code Cong. and Adm.News, p. 912.

§ 6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay

[See main volume for text of (a) and (b)]

(c)(1) Each member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled, when not on active duty, to retainer pay—

(A) in the case of a member who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of September 8, 1980, at the rate of 2½ percent of the basic pay that he received at the time of transfer or, in the case of a member who has served as master chief petty officer of the Navy or sergeant major of the Marine Corps, of the highest basic pay to which he was entitled while so serving, if that basic pay is higher than the basic pay received at the time of transfer; or

(B) in the case of a member who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after September 8, 1980, at the rate of 2½ percent of the monthly retainer pay base computed under section 1407(d) of this title;

multiplied by the number of years of active service in the armed forces.

(2) A member may recompute his retainer pay under section 1402 or 1402a of this title, as appropriate, to reflect active duty after transfer.

(3) If the member has been credited by the Secretary of the Navy with extraordinary heroism in the line of duty, which determination by the Secretary is final and conclusive for all purposes, his retainer pay shall be increased by 10 percent.

(4) In no case may a member's retainer pay be more than 75 percent of the basic pay or monthly retainer pay base upon which the computation of retainer pay is based.

[See main volume for text of (d)]

As amended Dec. 16, 1967, Pub.L. 90-207, § 3(4), 81 Stat. 653; Sept. 8, 1980, Pub.L. 96-342, Title VIII, § 813(d)(5), 94 Stat. 1105; Dec. 12, 1980, Pub.L. 96-513, Title V, § 513(17), (19), 94 Stat. 2932.

References in Text. The date of the enactment of the Department of Defense Authorization Act, 1981, referred to in subsec. (c), means the date of the enactment of Pub.L. 96-342, which was approved Sept. 8, 1980.

1980 Amendments. Subsec. (c). Pub.L. 96-513, substituted "September 8, 1980" for "the date of the enactment of the Department of Defense Authorization Act, 1981" wherever appearing, and "master chief petty officer of the Navy" for "senior enlisted advisor of the Navy".

Pub.L. 96-513 reworked existing provisions into para. (1) in (c) and, as so reworked in par. (1) designated existing

It states that the purpose of § 8 of the Act of August 4, 1949, was to amend the Act of July 1, 1913, to "eliminate references to the Coast Guard", and clearly indicates that there was no intent to change existing laws relating to the Navy. The report in speaking of substantive changes in existing law brought about by the revision of Title 14 states as follows: "Throughout this revision an effort has been made to make only those substantive changes which are noncontroversial, which seem to be necessary due to changes in the Coast Guard, its functions, or its relationship to other departments of the Government; which are necessary in order to reconcile inconsistent provisions and remove obsolete and redundant language; and which seem desirable in order to parallel similar provisions having application to the Navy". The only provision from the Act of July 1, 1918, codified in Title 14 was the authority for the involuntary recall to active duty of commissioned officers and warrant officers on the retired list during war or national emergency, similar to the authority in this section.

Earlier Laws. Section 421, R.S. § 1402, was derived from Act Mar. 3, 1873, c. 230, § 1, 17 Stat. 547.

Notes of Decisions

I. Generally

It may be questioned whether Congress has constitutional power to authorize executive action which should result in setting aside the legal effect of the proceedings of a naval board and in restoring to the active list of the Navy one who had been retired thereunder. The law divides the Navy into two distinct classes, with distinct duties and distinct grades of pay. The retired list was to be filled from the active list, and an officer once placed upon it was off the active list and not a subject of promotion. The higher grades on the active list were to be constantly supplied by streams of promotion from below, the fountain being at the lowest grade of all and supplied from without. The practical construction put upon the statute by the executive has been that officers are placed upon each of these lists by the action of the President in conjunction with the Senate, the concurrence of the Senate to the appointment of an officer on the retired list being obtained by its approval of the nomination of his successor in his place by name. It may be questioned whether the Congress could, without abolishing the office, constitutionally remove an officer from an office into which he had been legally inducted, and still more whether it could place him in another office without the constitutional action of the President. These points not decided. Thompson v. U. S., 1883, 18 Ct.Cl. 634, 642.

Retired officers called upon active duty do not return to the active list unless under circumstances of a peculiar character. 1851, 17 Op.Atty.Gen. 36.

§ 6482. Retired enlisted members of the Regular Navy and Regular Marine Corps: authority to recall

In time of war or national emergency the Secretary of the Navy may order to active duty any retired enlisted member of the Regular Navy or the Regular Marine Corps. Aug. 10, 1956, c. 1041, 70A Stat. 417.

Historical and Revision Notes

Source (U. S. Code)

34 U.S.C. 423

Source (Statutes at Large)

Mar. 3, 1915, ch. 83, 38 Stat. 941 (8th par.); Aug. 29, 1916, ch. 417, 39 Stat. 591 (2d par.).

Explanatory Notes

The words "for such service as he may be able to perform" are omitted as surplusage. The words "of the Regular Navy or the Regular Marine Corps" are inserted for clarity, since this section is applicable only to retired enlisted members of the Regular Navy and the Regular Marine Corps. The recall to active duty of retired enlisted members of the Naval Reserve and the Marine Corps Reserve is covered by §§ 672 and 673 of this title. Reference to pay and allowances is omitted as superseded by § 201 of the Career Compensation Act of 1949 (37 U.S.C. 232).

tain the grades or ratings they hold at the time of their release. Aug. 10, 1956, c. 1041, 70A Stat. 417.

Historical and Revision Notes

Source (U. S. Code)

34 U.S.C. 434

Source (Statutes at Large)

July 1, 1918, ch. 114, 40 Stat. 719 (1st 9 lines of 2d par.).

Explanatory Notes

The words "who has been ordered into active service since April 6, 1917" are omitted as executed. The words "to higher enlisted grades or ratings" are inserted for clarity. The eligibility of retired enlisted men for appointments to warrant and commissioned grades is covered by chapter 539 of this title where the requirements for these appointments are set forth. The words "unless entitled to a higher grade under another provision of law" are inserted to make it clear that retired enlisted members are not precluded by this section from obtaining the benefits of other provisions of law that may give a higher grade to them on their release from active duty.

The provision relating to pay, allowances, and benefits is omitted because it was superseded by §§ 514 and 516 of the Career Compensation Act of 1949 (37 U.S.C. 314 and 316).

Cross References

Pay of retired personnel on active duty, see section 115 of Title 37, Pay and Allowances.

§ 6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall

(a) A member of the Fleet Reserve or the Fleet Marine Corps Reserve may be ordered by competent authority to active duty without his consent—

(1) in time of war or national emergency declared by Congress, for the duration of the war or national emergency and for six months thereafter;

(2) in time of national emergency declared by the President; or

(3) when otherwise authorized by law.

(b) In time of peace any member of the Fleet Reserve or the Fleet Marine Corps Reserve may be required to perform not more than two months' active duty for training in each four-year period and shall be physically examined at least once during each four-year period. If any member fails to report for the physical examination, the Secretary may order any pay due that member forfeited. Aug. 10, 1956, c. 1041, 70A Stat. 417.

Historical and Revision Notes

Source (U. S. Code)

34 U.S.C. 854d (1st 87 words of 2d proviso).
34 U.S.C. 854e (less 2d through 8th provisos).
34 U.S.C. 854 (note)

Source (Statutes at Large)

June 25, 1938, ch. 690, § 206 (1st 87 words of 2d proviso), 52 Stat. 1179; July 9, 1952, ch. 608, § 808, 66 Stat. 508.
June 25, 1938, ch. 690, § 206 (less 2d through 8th provisos), 52 Stat. 1179; Apr. 25, 1945, ch. 152, 59 Stat. 162.
July 9, 1952, ch. 608, § 803 (3d sentence), 66 Stat. 505.

Explanatory Notes

In subsection (a) the words "A member of the Fleet Reserve or the Fleet Marine Corps Reserve" are substituted for the words "Enlisted men so transferred to

continuous two year period of service and is now covered by section 1483(a) of this title.

Effective Date of 1962 Amendment. Amendment by Pub.L. 86-513 effective Sept. 15, 1961, but the authority to prescribe regulations under the amendment by Pub.L. 86-513 effective on Dec. 12, 1960, see section 701 of Pub.L. 86-513, set out as a note under section 101 of this title.

Effective Date of 1958 Amendment. Amendment by Pub.L. 85-422 intended to restate without substantive change the law in effect on Oct. 22, 1958, see section 8 of Pub.L. 85-422, set out as a note under section 2254 of Title 5, Government Organization and Employees.

Effective Date of 1949 Amendment. Amendment of section by Pub.L. 81-351 effective Oct. 1, 1949, see section 14 of Pub.L. 81-122, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

Legislative History: For legislative history and purpose of Pub.L. 85-422, see 1958 U.S.Code Cong. and Adm.News, p. 912. See, also, Pub.L. 85-422, 1958 U.S.Code Cong. and Adm.News, p. 4440; Pub.L. 86-513, 1960 U.S.Code Cong. and Adm. News, p. 2202.

Library references

Armed Services Cent. 12, 12.5(10).
C.J.S. Army and Navy §§ 16, 17, 20.

§ 6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall

[See main volume for text of (a)]

(b) In time of peace any member of the Fleet Reserve or the Fleet Marine Corps Reserve may be required to perform not more than two months' active duty for training in each four-year period.

As amended July 30, 1977, Pub.L. 95-79, Title VIII, § 805, 91 Stat. 333.

1977 Amendment. Subsec. (b). Pub.L. 95-79 struck out requirements relating to physical examinations for members of the Fleet Reserve and Fleet Marine Corps Reserve.

Legislative History. For legislative history and purpose of Pub.L. 95-79, see 1977 U.S.Code Cong. and Adm.News, p. 327.

§ 6487. Repealed. Pub.L. 96-513, Title III, § 302(b), Dec. 12, 1980, 94 Stat. 2903

Section, Act Aug. 10, 1956, c. 1041, 70A Stat. 418, related to the retirement pay of certain rear admirals who retire after serving two years on active duty in time of war or national emergency.

Effective Date of Repeal. Repeal effective Sept. 15, 1981, see section 701 of Pub.L. 96-513, set out as a note under section 101 of this title.

§ 6488. Repealed. Pub.L. 96-513, Title III, § 302(c), Dec. 12, 1980, 94 Stat. 2903

Section, Act Aug. 10, 1956, c. 1041, 70A Stat. 418, related to the retention of certain wartime appointments or promotions upon release from active duty. See section 1370 of this title.

Effective Date of Repeal. Repeal effective Sept. 15, 1981, see section 701 of Pub.L. 96-513, set out as a note under section 101 of this title.

CHAPTER 577—DEATH BENEFITS; CARE OF THE DEAD

§ 6321. Repealed. Pub.L. 85-861, § 36(21), Sept. 2, 1958, 72 Stat. 1571

Section, Act Aug. 10, 1956, c. 1041, 70A Stat. 418, related to allowances to dependents, and to designation of beneficiary, and is now covered by sections 1475-1480 of this title.

unhampered by the pressure and discouragement of pre-existing debt", an effect in direct contravention of the stated purpose of this title. Rutledge v. City of Shreveport, D.C.La.1975, 387 F.Supp. 1277.

Rule and policy of fire department prohibiting firemen from declaring bankruptcy under penalty of automatic dismissal conflicted with this title in that it effectively hampered firemen from obtaining new opportunity in life and clear field for future effort and was therefore unconstitutional and invalid under U.S.C.A.Const. Art. 6, cl. 2. Matter of Loftin, La.App.1976, 327 So.2d 543, certiorari denied 331 So.2d 851.

Fireman, automatically discharged upon his filing of bankruptcy pursuant to rule which was unconstitutional and invalid under U.S.C.A.Const. Art. 6, cl. 2, in that it conflicted with this title, was entitled to payment of back wages; furthermore, where record did not show extent, if any, of earnings by fireman during period he was unemployed in excess of what he was earning by part-time employment prior to his dismissal, there was no basis for granting offset against or mitigation of award for back pay. Id.

2. Vehicles

Provision of A.R.S. § 28-1163(B) that a discharge in bankruptcy did not relieve an individual from having his driver's license suspended if he failed to satisfy a judgment entered against him in an action arising out of operation of a motor vehicle was invalid under U.S.C.A.Const. Art. 6, cl. 2 as being in conflict with mandate of former section 35 of this title providing that receipt of a discharge in bankruptcy fully discharged all but certain specified judgments. Perez v. Campbell, Ariz.1971, 91 S.Ct. 1704, 402 U.S. 637, 29 L.Ed.2d 233.

McKinney's N.Y. Vehicle and Traffic Law former § 94-b, effect of which was that no judgment debtor in negligence action could by obtaining bankruptcy discharge rid himself of liability of suspension of motor vehicle operator's license unless paying judgment to extent of $5,000, or giving security to avoid suspension of license, was invalid as denying bankrupt full effect of discharge in bankruptcy. In re Perkins, D.C.N.Y.1933, 3 F.Supp. 697.

Discharge in bankruptcy was a "stay, satisfaction, or discharge of judgment" in personam against bankrupt for injuries to one struck by his automobile, within Code Pub.Gen.Laws Supp.1935, art. 56, § 187B requiring suspension of operator's license of any person failing to satisfy final judgment for damages resulting from operation of motor vehicle; such provision not applying to judgment debtors, discharged in bankruptcy. Ellis v. Rudy, 1937, 190 A. 294, 171 Md. 280.

Court must assume that Legislature did not intend to create futile conflict with former sections 1(12) and 35 of this title in enacting Code Pub.Gen.Laws Supp. 1935, art. 56, § 187B requiring suspension of motor vehicle operator's license for failure to satisfy final judgment for damages resulting from operation of such vehicle, and hence must presume that construction giving effect to such former provisions without impairing operation of discharge in bankruptcy was Legislature's purpose, in absence of unequivocal expression of different intention. Id.

SUBCHAPTER III- THE ESTATE

§ 541. Property of the estate

(a) The commencement of a case under under [1] section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) An interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, and profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include any power that the debtor may only exercise solely for the benefit of an entity other than the debtor.

(c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision—

(A) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

(e) The estate shall have the benefit of any defense available to the debtor as against an entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate.

Pub.L. 95–598, Nov. 6, 1978, 92 Stat. 2594.

[1] So in original.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95–989. This section defines property of the estate, and specifies what property becomes property of the estate. The commencement of a bankruptcy case creates an estate. Under paragraph (1) of subsection (a), the estate is comprised of all legal or equitable interest of the debtor in property, wherever located, as of the commencement of the case. The scope of this paragraph is broad. It includes all kinds of property, including tangible or intangible property, causes of action (see Bankruptcy Act § 70a(6)[former section 110(a)(6) of this title]), and all other forms of property currently specified in section 70a of the Bankruptcy Act § 70a [former section 110(a) of this title], as well as property recovered by the trustee under section 542 of proposed title 11, if the property recovered was merely out of the possession of the debtor, yet remained "property of the debtor." The debtor's interest in property also includes "title" to property, which is an interest, just as are a possessory interest, or leasehold interest, for example. The result of Segal v. Rochelle, 382 U.S. 375 (1966)[86 S.Ct. 511, 15 L.Ed.2d 428], is followed, and the right to a refund is property of the estate.

Though this paragraph will include choses in action and claims by the debtor against others, it is not intended to expand the debtor's rights against others more than they exist at the commencement of the case. For example, if the debtor has a claim that is barred at the time of the commencement of the case by the statute of limitations, then the trustee would not be able to pursue that claim, because he too would be barred. He could take no greater rights than the debtor himself had. But see proposed 11 U.S.C. 108, which would permit the trustee a tolling of the statute of limitations if it had not run before the date of the filing of the petition.

Paragraph (1) has the effect of overruling Lockwood v. Exchange Bank, 190 U.S. 294 (1903)[23 S.Ct. 751, 47 L.Ed. 1061, 10 Am.Bankr.Rep. 107], because it includes as property of the estate all property of the debtor, even that needed for a fresh start. After the property comes into the estate, then the debtor is permitted to exempt it under proposed 11 U.S.C. 522, and the court will have jurisdiction to determine what property may be exempted and what remains as property of the estate. The broad jurisdictional grant in proposed 28 U.S.C. 1334 would have the effect of overruling Lockwood independently of the change made by this provision.

Paragraph (1) also has the effect of overruling Lines v. Frederick, 400 U.S. 18 (1970)[91 S.Ct. 113, 27 L.Ed.2d 124].

Situations occasionally arise where property ostensibly belonging to the debtor will actually not be property of the debtor, but will be held in trust for another. For example, if the debtor has incurred medical bills that were covered by insurance, and the insurance company had sent the payment of the bills to the debtor before the debtor had paid the bill for which the payment was reimbursement, the payment would actually be held in a constructive trust for the person to whom the bill was owed. This section

CERTIFICATE OF SERVICE

I certify under penalties for perjury I have this date mailed three (3) complete copies of this document, postage prepaid, to counsel for the respondent, W. Lewis Burke, Jr., School of Law, University of South Carolina, Columbia, South Carolina 29208.

Dated 8-31-82

W. W. Miller

Ward W. Miller